G. R. S. App. F. IX-4]

1942-3

W File No. 178-42

Previous References.

(War)

Serial Nos. 1

Later References.

W 72-43-1

GENERAL AND REVENUE SECRETARIAT

Serial Nos. One only

Part B for February-1943.

SUBJECT.

The Enemy Agents Ordinance 1943.

B.V.Krishnan
16.2.43.

2245/W

The Emergency Agents Ordinance 1943.

Continuation Sheet. | File No. / Current No. | of | Page.

From The Secy to Govt Home & Revenue Dept No F. 8 40/W 2 dated 21st Jan. 40 inviting attention to the Emergency Agents Ordinance 1943.

1) Subd for perusal. A similar Emergency Act appears to be necessary here and the Resy have not asked for the promulgation of a similar enactment here. This will be subd to the Law Secy also for perusal.

CHIEF SECRETARY. 4015 22 JAN. 1943 GOVT OF MYSORE.

$\frac{\text{PS}}{22/1}$

2) The Law Secy may be consulted about the need for an emergency Act on the lines of the Ordinance.

— Sd —
22/1.

Secy to Govt

LAW DEPT. P.S. 22.1.43 GOVT OF MYSORE

3) For favour of remarks.

Law Secy not consulted

Sd
22/1
22 1 43

G.R.S. III—3]
R. A. & L. C.

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

THE INDIAN EXPRESS, MONDAY, JANUARY 11, 1943. 390/N.

ENEMY AGENTS AND THOSE WHO HELP

Trial And Punishment Provided For

NEW ORDINANCE ISSUED

NEW DELHI, Jan. 10.

The first Ordinance of the year issued under date January 9, provides for the trial and punishment of enemy agents and persons committing certain offences with intent to aid the enemy.

Death penalty is provided under the Ordinance for any one who is an enemy agent or who, with intent to aid the enemy, does or attempts or conspires with any other person to do any act which is designed or likely to give assistance to the naval, military or air operations of the enemy or to impede the naval, military or air operations of His Majesty's forces or to endanger life.

Any offence under the provisions of the Ordinance committed at any time after September 2, 1939, whether committed before or after the commencement of the Ordinance, is triable by a special judge who may pass any sentence authorised by law. If a person is sentenced to death or transportation for life or if the special judge certifies that the case involved questions of special difficulty, whether of law or fact, or was one which for any other reason ought to be reviewed the proceedings before the special judge shall be submitted for review by a person appointed in this behalf by the Central Government, chosen from among High Court judges in British India. His decision shall be final. If the special judge or the reviewing judge grants permission, the accused may be defended by a Pleader, but such Pleader shall be a person whose name is entered in a list prepared in this behalf by the Central Government or who is otherwise approved by the Central Government.

Any person who, without the previous authorisation of the Central Government, discloses or publishes any information with respect to any proceedings or with respect to any person proceeded against under the Ordinance shall be punishable with a maximum of two years' imprisonment or with fine or with both.—

SPECIAL AND REVIEWING JUDGES APPOINTED

The Central Government have appointed Mr. E. E. Mack, Barrister-at-law, I.C.S., as a Special Judge and Mr. Justice S. Wadsworth, Madras High Court, as the reviewing Judge under the Enemy Agents' Ordinance.—A.P.

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Submitted for perusal

Chief Secretary) 11.1.43

Legis Section) 12/1 12/1

BJR 13.1.43

Please put up Copy of the Ordinance.

13.1.43

Secretary's Office
Mr. D.V.
LEGISLATIVE

Sir,
A copy of the Ordinance (Flag B) is put up.
JN. 18-1-43
18.1.43

1/f) A Copy of the Ordinance is put up for perusal. Enemy agents and those who aid the enemy or impede the war operations of our forces etc, are liable to the penalty of death.

The ordinance also provides for a Special Reviewing

G.R.S. III—3]
R. A. & L. C.

390/M.

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

JAN 25 1943
No. 6373.

to trial of such offences and contains provisions somewhat similar to those in the Special Criminal Courts Act. 2) It is perhaps unnecessary to undertake similar legislation in Mysore at present.

SDN
22.1.43

Law Secy)

SECY. LAW DEPT
8714
22-1-43
GOVT OF MYSORE

1) There is no necessity for this legislative measure as present

Chief Secy

22-1-43

SDN
22.1.43

Kll
28/1

BKR
25.1.43

28-1-43

BKR
28.1.43

CHIEF SECY
2712
28 JAN 1943
GOVT OF MYSORE

Reference para 3 of the Notes. Submitted for perusal.

SDN
28.1.43

Chief Secy)

28/1

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

G.R.S. III—3]
R. A. & L. C.

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

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N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

390/41.

Submitted for perusal

Chief Secretary) 11.1.43.

Legis Section) 11/1/43

13.1.43

Please put up Copy of the Ordinance.

13.1.43

Sub

A copy of the Ordinance (Flag B) is put up.

18-1-43

18.1.43

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G.R.S. III—3]
R. A. & L. C.

9-7-43 . 390/M.

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

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SDM
22.1.43

Law Secy)

JAN 25 1943
No. 6373.

SECY. L. & V DEPT.
8714
22. 1. 43
GOVT OF MYSORE

1) There is no necessity for this legislative measure as present

Ans
22-1-43
SDM
22.1.43

Kll
28/1

BXR
25.1.43

Ans
29-1-43

BXR
28-1-43

CHIEF SECY.
27/12
28 JAN 194
GOVT. OF MYSORE.

Reference para 3 of the Notes. Submitted for perusal.

SDM
28.1.43

Chief Secy)

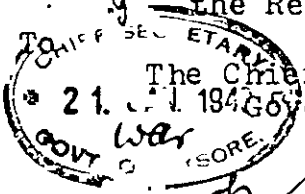
28/1

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

W178-42-1. 2245 W

From : The Secretary to the Hon'ble the Resident in Mysore.

To : The Chief Secretary to the Government of Mysore, Bangalore.



Memorandum No.F. 8 -43/W.

Bangalore, the 21st January 1943.

The Enemy Agents Ordinance, 1943.

Attention is invited to the Enemy Agents Ordinance, 1943 - Ordinance No.I of 1943 - published in the Gazette of India Extraordinary dated the 9th January 1943.

for SECRETARY TO THE RESIDENT.

REGISTERED No. L. 3131

The Gazette of India

EXTRAORDINARY

PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, JANUARY 9, 1943

GOVERNMENT OF INDIA

LEGISLATIVE DEPARTMENT

New Delhi, the 9th January, 1943

ORDINANCE No. I OF 1943.

AN

ORDINANCE

to provide for the trial and punishment of enemy agents and persons committing certain offences with intent to aid the enemy.

WHEREAS an emergency has arisen which makes it necessary to provide for the trial and punishment of enemy agents and persons committing certain offences with intent to aid the enemy ;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor General is pleased to make and promulgate the following Ordinance :—

26 Geo. 5, c. 2.

Short title, extent and commencement.

1. (*1*) This Ordinance may be called the Enemy Agents Ordinance, 1943.

(*2*) It extends to the whole of British India and applies also—

(*a*) to British subjects and servants of the Crown in any part of India,

(*b*) to British subjects who are domiciled in any part of India wherever they may be, and

(*c*) to persons on board any ship or aircraft registered in British India.

(*3*) It shall come into force at once.

Definitions.

2. In this Ordinance, unless there is anything repugnant in the subject or context,—

(*a*) "enemy" means any State at war with His Majesty ;

[*Price 1 anna.*

(*b*) "enemy agent" means a person, not operating as a member of an enemy armed force, who is employed by, or works for, or acts on instructions received from, the enemy.

Penalty for aiding the enemy.

3. Whoever is an enemy agent, or, with intent to aid the enemy, does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy or to impede the naval, military or air operations of His Majesty's Forces or to endanger life, shall be punishable with death.

Offences triable under this Ordinance.

4. (*1*) Any offence punishable under section 3 committed at any time after the 2nd day of September, 1939, whether committed before or after the commencement of this Ordinance, shall be triable under the provisions of this Ordinance.

(*2*) Where a person is charged before a Special Judge with an offence punishable under section 3, he may be charged with and tried at the same trial for any other offence with which he might, under the Code of Criminal Procedure, 1898, be charged at one trial, and the procedure of this Ordinance shall apply to the trial of any such other offence. V of 1898.

Appointment and jurisdiction of Special Judges.

5. (*1*) For the trial of offences punishable under section 3, the Central Government may appoint as Special Judges, having jurisdiction throughout British India, any persons who have acted for a period of not less than two years in the exercise of the powers of a Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898. V of 1898.

(*2*) A Special Judge shall try any offence punishable under section 3 which the Central Government by general or special order in writing directs to be tried by him, and may hold his sittings for the trial of any case in any place fixed by the Central Government.

Transfer of cases from one Special Judge to another.

6. (*1*) The Central Government may, at any stage of the proceedings before a Special Judge, transfer the case to another Special Judge.

(*2*) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, when a case is transferred under sub-section (*1*), the Special Judge to whom the case is transferred shall not be bound to re-summon or re-hear the witnesses or any of them unless he is satisfied that such a course is necessary in the interests of justice. V of 1898.

Procedure of Special Judges.

7. (*1*) A Special Judge may take cognisance of an offence without the accused being committed to his Court for trial, and, in trying accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates: V of 1898.

Provided that a Special Judge shall ordinarily record a memorandum only of the substance of the evidence of

each witness examined, may refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material, and shall not be bound to adjourn any trial for any purpose unless such adjournment is in his opinion necessary in the interests of justice.

(2) In matters not coming within the scope of sub-section (1) the provisions of the Code of Criminal Pro- V of 1898. cedure, 1898, so far as they are not inconsistent with this Ordinance, shall apply to the proceedings of a Special Judge; and for the purposes of the said provisions the Court of the Special Judge shall be deemed to be a Court of Session.

Sentences by Special Judges.

8. A Special Judge may pass any sentence authorised by law.

Review of convictions.

9. If in any proceedings before a Special Judge—

(*a*) a person convicted is sentenced to death, or to transportation for life, or

(*b*) though no person is so sentenced, the Special Judge certifies that in his opinion the case has involved questions of special difficulty, whether of law or fact, or is one which for any other reason ought properly to be reviewed,

the proceedings shall be submitted for review by a person appointed in this behalf by the Central Government, which person shall be chosen from the Judges of a High Court in British India, and the decision of that person shall be final.

Hearing of proceedings *in camera*.

10. If, as respects any proceedings before a Special Judge or before a Judge reviewing under section 9 the proceedings of a Special Judge, the Special Judge or reviewing Judge, as the case may be, is satisfied that it is expedient in the interests of the public safety or the defence of British India so to do, such Judge may give directions that throughout or during any part of the proceedings such persons or classes of persons as the Judge may determine shall be excluded.

Limitation on appearance of pleaders.

11. (1) In any proceedings before a Special Judge, and in proceedings before a Judge reviewing under section 9 the proceedings of a Special Judge when the reviewing Judge grants permission in this behalf, a person accused of an offence triable under this Ordinance may of right be defended by a pleader, but such pleader shall be a person whose name is entered in a list prepared in this behalf by the Central Government or who is otherwise approved by the Central Government.

(2) A Special Judge, or a Judge reviewing under section 9 the proceedings of a Special Judge, may appoint a pleader whose name is entered in the list

referred to in sub-section (*1*) or who is otherwise approved by the Central Government to defend at any stage of the proceedings a person accused of an offence triable under this Ordinance who has not himself engaged a pleader.

(*3*) A Special Judge shall not be required to grant an adjournment for the purpose of securing the attendance of a pleader, if in the opinion of the Special Judge such adjournment would cause unreasonable delay in the disposal of the case.

Special rule of evidence.

12. Notwithstanding anything contained in the Indian Evidence Act, 1872, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before a Special Judge, if such person is dead or cannot be found or is incapable of giving evidence. 1 of 1872.

Special rule of procedure.

13. (*1*) When any accused in a trial before a Special Judge has by his voluntary act rendered himself incapable of appearing before the Court, or resists his production before it, or behaves before it in a persistently disorderly manner, the Court may, at any stage of the trial, by order in writing, made after such inquiry as it may think fit, dispense with the attendance of such accused for such period as it may think fit and proceed with the trial in his absence.

(*2*) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (*1*), such accused shall be deemed not to plead guilty.

(*3*) An order under sub-section (*1*) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial, or being present in person if he has become capable of appearing, or appears in Court and undertakes to behave in an orderly manner.

(*4*) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no finding, sentence or order passed in a trial before a Special Judge shall be held to be illegal by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (*1*). V of 1898.

Exclusion of interference of other Courts.

14. Notwithstanding the provisions of the Code of Criminal Procedure, 1898, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence made or passed by a Special Judge or a reviewing Judge under this Ordinance and, save as provided in this Ordinance, no Court shall have authority to revise such order or sentence or to transfer any case from the Court of a Special V of 1898.

Judge, or to make any order under section 491 of the V of 1898. Code of Criminal Procedure, 1898, or have any jurisdiction of any kind in respect of any proceedings under this Ordinance.

Application of ordinary law.

15. The provisions of the Code of Criminal Procedure, V of 1898. 1898, and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Ordinance, shall apply to all matters connected with, arising from, or consequent upon, a trial under this Ordinance.

Disclosure of information relating to proceedings under this Ordinance.

16. Any person who, without the previous authorisation of the Central Government, discloses or publishes any information with respect to any proceedings or with respect to any person proceeded against under this Ordinance, shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

Power to make rules.

17. The Central Government may make rules providing for any matter necessary to carry into effect the purposes of this Ordinance.

LINLITHGOW,

Viceroy and Governor General.

HOME DEPARTMENT

NOTIFICATIONS

New Delhi, the 9th January 1943

No. 163/42-Poll.(I).—In exercise of the powers conferred by sub-section (1) of section 5 of the Enemy Agents Ordinance, 1943 (No. 1 of 1943), the Central Government is pleased to appoint Mr. E. E. Mack, Bar.-at-Law, I.C.S., as a Special Judge for the trial of offences punishable under section 3 of the said Ordinance.

No. 163/42-Poll.(I).—In exercise of the powers conferred by section 9 of the Enemy Agents Ordinance, 1943 (No. 1 of 1943), the Central Government is pleased to appoint the Hon'ble Mr. Justice S. Wadsworth, Bar.-at-Law, I.C.S., a Judge of the Madras High Court, as a person before whom the proceedings of a Special Judge shall be submitted for review under the said section.

R. TOTTENHAM,

Govt. of India